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AUTHOR	Abeson, Alan; Trudeau, Elaine
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ABSTRACT

Listed for each of the 50 alphabetically presented states are the legal definitions of handicapping conditions and age requirements to determine eligibility for public school special education programs. Explained are changes in special education laws, which have increased exceptional children's range of eligibility for special education services to below 6 and above 18 years of age in some states (some states have removed all minimum age requirements). Other changes mentioned are expansion of categories of children (such as children with handicaps resulting from rubella, or learning disabled children) eligible for programs, and endowment of the state superintendent of schools with authority to include children with handicaps who are not mentioned in listed categories. (MC)

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HANDICAPPED CHILDREN REDEFINED— LEGAL ELIGIBILITY FOR SERVICES EXPANDED

Alan Abeson
Elaine Trudeau

STATE-FEDERAL INFORMATION CLEARINGHOUSE
FOR EXCEPTIONAL CHILDREN
The Council for Exceptional Children
1411 S. Jefferson Davis Highway
Suite 900
Arlington, Virginia 22202

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As the opportunities for handicapped children to receive an education expand in the United States, there is an increasing awareness that the degree and quality of this expansion is heavily dependent on the activities of government at all levels and in all branches -- executive, judicial, and legislative. Recognizing government's crucial role in the expansion process and the information needs of persons or agencies involved in or considering change, The Council for Exceptional Children through a grant from the Bureau of Education for the Handicapped, U.S. Office of Education established the State-Federal Information Clearinghouse for Exceptional Children (SFICEC) to provide this information.

The purpose of SFICEC is to identify, acquire, process, selectively retrieve, and disseminate information pertaining to government and the education of handicapped children. In carrying out this charge, SFICEC has developed a computer-based information system for the efficient and accurate retrieval of information.

To disseminate this information, SFICEC develops and distributes information products with material drawn from its data base. The products focus on specific areas pertaining to government and the education of handicapped children and utilize information from the law, administrative literature, attorney general's opinions and actual litigation. Other products discuss key issues and areas of concern to educators, parents, and public policy makers. In addition, SFICEC is also prepared to conduct searches to answer individual specific information requests.

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Alan R. Abeson, Director

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LAW REVIEW*

HANDICAPPED CHILDREN REDEFINED - LEGAL ELIGIBILITY FOR SERVICES EXPANDED

Alan Abeson/Elaine Trudeau

Within recent years, marked changes have occurred in special education laws to increase the range of exceptional children eligible for special education services. The impact of Headstart programs, federal interest in early education for the handicapped (The Handicapped Children's Early Education Assistance Act, P. L. 90-538), and research demonstrating the value of preschool programs have motivated many states to eliminate age 6 as the "open sesame" to school for the handicapped. At the other end of the scale where laws in the past provided for the conclusion of educational experiences for the handicapped at age 16 or 18, some states have extended the limit to 21 and in at least one case, 24 (Kansas General Statutues, Section 72-5342).

Since at present there is no clear determination of the optimal age for introducing handicapped children to educational programs, some states have passed legislation which specifically removes minimum age requirements. In Idaho and Kans , where such laws have been passed (Idaho Code, Section 33-2001; Kansas, Senate Bill 31, 1969), programs may theoretically be provided for handicapped children at birth. The Maryland and Connecticut laws also state no minimum age but indicate that special education programs may be conducted for children "who have not attained school age but whose educational potential will be irreparable diminished with special education at an early age [Connecticut General Statutes, 1967 Supplement, Section 10-76d; Maryland Senate Bills 17 & 38, 1969]." California law permits the operation of experimental programs for deaf and severely hard of hearing children from 18 months to 3 years (California Education Code, Section 6812-5). Similarly, in Indiana experimentaly programs may be established for deaf children as young as 6 months (Indiana House Enrolled Act No. 1070, 1969).

More than one-half of the states presently authorize programs for the handicapped until age 21 are eligible to continue to receive special education services until they reach 24. Students at the state school for the deaf in Iowa may have the usual age limit of 21 extended to age 35 if special circumstances exist (Iowa Code Title 12, Section 270.3). In other states such as Ohio and Oklaho a no maximum age is stated fo for the provision of special education services.

Beyond the expansion of services to children on the basis of earlier and later ages, the categories of exceptional children eligible for programs have also been expanded. For example, after the rubella epidemic of 1964 which produced major concern about multiply handicapped children a number of states added this category or the deaf blind to their definitions of handicapped children. The increasing awareness of the "learning disabled child" and pressures to provide programs for such children have resulted in the inclusion of terms denoting learning disabilities in the definitions of the handicapped in 18 states (Legislation for Children with Learning Disabilities,

*Updated from a December, 1970 Exceptional Children article

CEC-SFICEC, 1970)

Examination of the definitions of handicapped children which are utilized within state laws indicated that the majority lists the categories of children who are eligible for programs. A typical example of this type of definition is the following from Kansas:

> 'Exceptional children' means children under twenty-one years of age who (a) are crippled; or (b) have defective sight; or (c) are hard of hearing; or (d) have an impediment in speech; or (e) have heart disease; or (f) have tuberculosis; or (g) have cerebral palsy; or (h) by reason of emotional and social maladjustment or intellectual inferiority or superiority do not profit from ordinary instructional methods; or (i) are unable to attend the regular public school classes with normal children by reason of any physical or mental defect [Kansas General Statutes, Section 72-5334].

While the West Virginia law also lists categories, it also provides the state superintendent with the power to include other children not listed as handicapped and thus eligible for special education. This law includes the following exceptionalities: "visually impaired, hearing impaired, physically or orthopedically handicapped, autistic, intellectually gifted, socially or emotionally maladjusted including the delinquent, learning disabilities both physical and psychological, and any other areas of exceptionality which may be identified and approved by the state superintendent of free schools [West Virginia Senate Enrolled Bill 44, 1969]."

In an attempt to provide flexibility in the definition of the handicapped which would prevent children from "falling into the cracks" between categories, New York state in 1967 adopted a law which defines a handicapped child as "one who, because of mental, physical, or emotional reasons cannot be educated in regular classes but can benefit by special services...[Laws of New York Article 89, Section 4401]" leaving the further delineation of children to be served to the state education department.

It must be added that although a specific category of handicapped child may be absent from the state definition of handicapped children, it does not mean that services are not provided to those children. The rules and regulations adopted by each state to implement its laws frequently refine and interpret the definitions to be broader and more inclusive.

Presented below is an overview of the definitions of the handicapped and the age requirements for programs in the 50 states.

DEFINITION	Minimum	Maximum
ALABAMA Includes but not limited to the mild and moderately to severely retarded but not the profoundly retarded; deaf and hearing impaired; blind and vision impaired; the crippled and those having other handicaps not specifically mentioned; the emotionally conflicted; the socially maladjusted; those with specific learning disabilities, the multiple handicapped and the intellectually gifted	6	21
ALASKA Educable mentally retarded, trainable mentally retarded, physically handicapped, emotionally handicapped, learning disabled, gifted, and multiple handicapped	legal school age	
ARIZONA Gifted; educable mentally handicapped, emotionally handicapped, homebound or hospitalized; multiple handicapped; physically handicapped; specific learning disabled, speech handicapped; trainable handicapped	5	21
ARKANSAS Retarded; hard of hearing; deaf; speech impaired; visually handicapped; emotionally disturbed; crippled; specific learning disabilities or other health impaired children requiring special education and related services-- mental, physical, emotional or learning problems requires special education services. This term is to be specifically interpreted to mean but not wholly limited to the mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, emotionally disturbed, crippled, specific learning disabled, or other health impaired children who be reason thereof require special education and related services. *If the state activates a kindergarten program the age will be lowered to five.	6	21
CALIFORNIA Deaf or hard of hearing; blind or partially seeing; orthopedically or health impaired; aphasic; speech handicapped; other minors with a physical illness or condition making attendance in regular classes		

CALIF. cont'd	Minimum	Maximum
impossible or inadvisable; minor with physical impairments so severe as to require instruction in remedial physical education; multiple handicapped; physically handicapped; educationally handicapped and mentally retarded	3	21
	legal school age	
COLORADO		
Physically handicapped	3	21
Educable mentally handicapped	5	21
Educationally handicapped (emotionally handicapped or perceptually handicapped or both)	5	21
Learning disabilities	no age requirements	
Trainable mentally retarded	5	18
CONNECTICUT		
Mentally retarded; physically handicapped; socially or emotionally maladjusted; neurologically impaired; learning disabled or extraordinary learning ability or outstanding talent in the creative arts	5*	21**
*Handicapped children beginning at age 3 may receive special education services if ther additional attainment would be irreparable damaged without it.		
** 21 or high school graduation, whichever occurs first		
DELAWARE		
Physically handicapped, maladjusted, mentally handicapped, learning disabled, gifted, and talented	4	21
FLORIDA		
Educable mentally retarded, trainable mentally retarded, speech impaired, deaf, hard of hearing, blind, partially sighted, crippled and other health impaired, gifted, emotionally disturbed, socially maladjusted, specific learning disabled	3	none
GEORGIA		
Mentally retarded, physically handicapped, speech handicapped, multiply handicapped, autisitc, intellectually gifted, hearing impaired, visually impaired, and any other exceptionality that may later be identified	3	18

	Minimum	Maximum
GEORGIA cont'd Special program: A preschool program with no age limitations is authorized for the deaf, hearing impaired, and speech handicapped		
HAWAII Children who deviate in physical, mental, social or emotional characteristics to the extent that specialized training, techniques, and equipment are needed for maximum fulfillment	none	20
IDAHO Includes but not limited to physically handicapped mentally retarded, emotionally disturbed, chronically ill, perceptually impaired, visually or auditory handicapped, speech impaired, and academically talented	no lower limit (a law specifically abolished such limit)	21
ILLINOIS Physically handicapped, children with learning disabilities, maladjusted children, educable mentally handicapped, trainable mentally handicapped, speech defective, and multiply handicapped	3	21
INDIANA Physical or mental disability as defined by regulations and includes the multiply handicapped	3	21
IOWA Crippled, defective sight, hard of hearing, speech impairments, heart disease, tuberculosis, physical defects, emotionally maladjusted, and children intellectually incapable of regular instructional programs *Children not in state institutions under age 5 may receive services ** Programs may be extended for three years for persons who, because of a congential defect, accident, or prolonger illness, are unable to complete special education requirements by the age 21.	5*	21**
KANSAS Developmentally disabled, homebound, crippled, hard of hearing, socially and emotionally maladjusted,		

KANSAS cont'd	Minimum	Maximum
defective sight or speech, cerebral palsy, delicate (including heart conditions), tubercular intellectually gifted, and those children who have been found by a competent authority to be best educated by special instruction from a special teacher on a full or part time basis *Programs may be extended for three years for persons who, because of a congenital defect, accident, or prolonged illness, are unable to complete special education requirements by age 21.	birth	21*
KENTUCKY Neurologically impaired, intellectually gifted, emotionally disturbed, functionally retarded, children with learning disabilities or communication disorders, multiply handicapped, physically handicapped, speech defective and educable and trainable mentally retarded	birth	21
LOUISIANA Physically handicapped, mentally handicapped, and other exceptional children including slow learners, educable and trainable mentally retarded, deaf and hard of hearing, speech impaired, blind, and/or partially sighted, emotionally disturbed, cerebral palsied, gifted, children with learning disabilities, crippled, and other health impaired children	3	21
MAINE Children able to benefit from an instructional program but who cannot be provided for in regular programs because of physical or mental deviations	5	20
MARYLAND Physically and mentally handicapped	6	18
Special program: Children under age 6 may receive special services if such services would help them to approach a degree of development similar to pupils in regular school programs		

MASSACHUSETTS	Minimum	Maximum
School age child who because of temporary or more permanent adjustment difficulties or attributes arising from intellectual, sensory, emotional or physical factors, cerebral disfunctions, perceptual factors, or other learning disabilities or any combination of these who is unable to make effective progress in a regular school program	3	21
MICHIGAN		
Handicaped including but are not limited to mental, physical, emotional, behavioral, sensory, and speech handicaps	none	25
MINNESOTA		
Deaf, hard of hearing, blind, partially seeing, crippled, speech defective or otherwise physically impaired in body or limb so that special education is needed	4	21
trainable mentally retarded, educable mentally retarded	5	21
emotionally disturbed	6	21
MISSISSIPPI		
Defective hearing, vision, speech, mental retardation, physical conditions	birth	21
MISSOURI		
Children who deviate from the average in physical, mental, or social developmental characteristics to the extent that they require special education services	6*	21
*Children may be enrolled in existing or approvable kindergarten programs		
MONTANA		
Physically handicapped, includes but not limited to cardiac, cerebral palsy, speech defective, and hearing and vision handicapped, educable mentally retarded	birth	25
Trainable mentally handicapped	birth	21
Custodial mentally handicapped	legal school age	
State school for the deaf and blind	no longer limit within state schools	legal school age

	Minimum	Maximum
NEBRASKA		
Trainable mentally retarded, physically handicapped crippled, visually handicapped, hard of hearing, speech defective, cardiopathic, tubercular, cerebral palsied or otherwise physically handicapped, educable mentally retarded, multiply handicapped, emotionally disturbed	5	21
NEVADA		
Vision, hearing, speech, orthopedic, mental, and neurological disorders or defects, or any disabling condition caused by accident, injury, or disease	3	21
NEW HAMPSHIRE		
Deaf	4	21
Physically, emotionally, and intelleectually handicapped	5	21
NEW JERSEY		
Mentally retarded, visually handicapped, auditorily handicapped, communication handicapped, neurologically or perceptually impaired, orthopedically handicapped, chronically ill, emotionally disturbed, socially maladjusted, and multiply handicapped	5	20
Program may be conducted on a permissive basis to children under 5 and over 20 of they have no high school diploma or equivalent		
NEW MEXICO		
Exceptional children are children whose abilities render regular services in the public school inconsistent with their educational needs	legal school age	21
NEW YORK		
Children who because of mental, physical, or emotional reason emotional reasons cannot be educated in regular classes	legal school age	
NORTH CAROLINA		
For handicapped, crippled, other classes of individuals requiring special types of instruction	birth	adulthood

NORTH DAKOTA	Minimum	Maximum
Children with physical, mental, emotional, or social conditions with an educable mind	6	21
OHIO		
Defective hearing and vision, crippled, trainable mentally retarded, educable mentally retarded, emotionally handicapped	5	21
OKLAHOMA		
Gifted, educable mentally retarded, trainable mentally retarded, speech defective, emotionally disturbed, perceptually handicapped, children with special health problems, children requiring services of a visiting counselor, specifically learning disabled as a result of neurological impairment, multiply handicapped	4	21*
Deaf blind, blind and partially blind, hard of hearing and deaf	2	21*
*If the physical condition prevents a child from completing his program by age 21, services may be extended to age 25.		
OREGON		
Blind, deaf, partially sighted, hard of hearing, speech defective, crippled or physically handicapped, extreme learning problems, unwed pregnant or unwed mother with a child in her care, neurologically handicapped, emotionally handicapped, trainable mentally retarded	birth	21
Educable mentally retarded	6	21
PENNSYLVANIA		
Children who deviate from the average in physical, mental, emotional, or social characteristics should extend that they need education facilities or services. All children in detention homes are included	legal school age	
RHODE ISLAND		
Mentally retarded, physically handicapped, and emotionally handicapped	3	21

AGE OF ELIGIBILITY

SOUTH CAROLINA	Minimum	Maximum
Educable mentally retarded, trainable mentally retarded, emotionally handicapped, orthopedically handicapped, physically handicapped, visually handicapped, learning disabled	legal school age	
Hearing handicapped	4	21
SOUTH DAKOTA		
Physical or mental conditions that cannot be adequately provided for through the regular public schools	birth	21
TENNESSEE		
Educable, trainable, and profoundly retarded, the speech and/or language impaired, the deaf and hearing impaired, the blind and visually limited, the physically handicapped and/or other health impairments including homebound, hospitalized, pregnant. The learning disabled includes the perceptually handicapped, the emotionally conflicted, functionally retarded, socially maladjusted, emotionally handicapped, intellectually gifted, and any other child whose needs cannot be met in the regular classroom setting	4	21
TEXAS		
Hard of hearing, orthopedically handicapped, physically handicapped, mentally retarded, emotionally disturbed, language or learning disabled	3	21
UTAH		
Exceptional physical or mental condition	5	21
VERMONT		
Physical or mental deviations	birth	21
VIRGINIA		
Mentally retarded, physically handicapped, emotionally disturbed, learning disabled, speech impairment, hearing impaired, mentally handicapped or otherwise handicapped	2	21

WASHINGTON	Minimum	Maximum
Temporary or permanent in normal educational processes because of a physical or mental handicap or emotional maladjustment or any other handicap or children with specific language or learning disabilities resulting from perceptual motor problems and visual and auditory perception and integration	legal school age*	
*Problems may be provided to children on preschool level		
WEST VIRGINIA		
Visually impaired, physically handicapped, orthopedically handicapped, epileptic, mentally retarded, speech handicapped, multiply handicapped, autistic, intellectually gifted, socially or emotionally maladjusted (including the delinquent), learning disabled both physically and psychologically, and others which may be identified by the state superintendent of free schools	6*	21
*Programs may be conducted on a permissive basis for children aged 3-6.		
WISCONSIN		
Crippled, cardiac, visually handicapped, auditorily handicapped, speech handicapped, mentally retarded, and otherwise physically handicapped	birth	21
WYOMING		
Mental, physical, psychological, or social maladjustment	legal school age	